

RESCO PRODUCTS, INC.

TERMS AND CONDITIONS OF SALE

1. BUYER'S AND SELLER'S ACCEPTANCE OF TERMS AND CONDITIONS

The terms and conditions of this acknowledgment shall supersede any provisions, terms or conditions contained in any purchase order or other writing which the Buyer may give or receive, and the rights of the parties shall be governed exclusively by the terms and conditions hereof. Seller's acceptance of Buyer's order for the products described herein is expressly made conditional on assent by Buyer to all terms and conditions herein expressed, and either Buyer's failure to object in writing within seven (7) days from the date hereof, or Buyer's acceptance of all or any part of said products, whichever first occurs, shall be deemed to constitute such assent.

All terms and conditions of this acknowledgment are fully set forth herein and shall constitute the whole agreement between Seller and Buyer; and no agent, employee, representative or other party is authorized to bind the Seller by any agreement or warranty not expressed herein. No additions to or modifications of the terms and conditions hereof shall be effective unless reduced to writing and signed by an officer of the Seller.

2. PRICES

- A. **SUBJECT TO CHANGE** - Price at time of shipment will apply. The Seller reserves the right to correct any obvious typographical or clerical errors in prices or specifications contained in this acknowledgment.
- B. **F.O.B. POINT** - Unless otherwise stated, all prices are F.O.B. shipping point.
- C. **TAXES** - All prices stated in this acknowledgment are subject to any present or future tax or other governmental charge payable by Seller upon the production processing, sale, shipment and/or use of the products herein specified imposed by Federal, state, or municipal authority, or international government authority, and such additional tax or other governmental charge shall be added to the price herein stated and shall be paid by the Buyer. Any intangible or documentary stamp tax or other charges payable by the Seller upon this acknowledgment or any additional agreement between the Buyer and Seller imposed by the Federal, state, municipal, or international governmental authority shall also be added to the price herein stated and shall be paid by the Buyer.
- D. **PACKAGING** - All prices are based on shipment in full standard Seller's domestic packages. If export packaging is required, it must be requested by Buyer and shall be at Buyer's expense.
- E. **PAYMENT TERMS** - All terms are net 30 days from invoice date unless otherwise specified. Amounts outstanding for more than 30 days shall bear interest at the rate of 1½% per month (annual rate of 18%).
- F. **ADDITIONAL CHARGES:** Seller may impose additional charges to buyer, if legal action is necessary to recover past due invoice amounts; these charges may include all cost of suit, reasonable attorney's and collection agency fees and service charges.

3. DELIVERY

The Seller will make every reasonable effort to complete delivery as near the time intended as possible, but in no event will the Seller be held responsible for delays in performance resulting in whole or in part from any causes beyond the reasonable control of the Seller including, but not limited to, acts of God, fire, accident, strikes, or other differences with employees, breakdown of machinery or equipment, war, riot, or other civil disturbances, explosion, embargo, delays, losses or damages in transportation, shortages of labor or materials, delays in shipment or receiving of materials from suppliers, or acts of civil or military authority. The Seller shall be excused from making deliveries to the extent the time of completion of delivery of the product herein described for a period equal to the time of such interference. If delivery of any special item or items is delayed by Buyer for more than 30 days after completion, Seller may invoice for such items and hold Buyer's disposition for a reasonable period of time. Buyer shall make payment for such special items within 30 days from the date of invoice.

4. TRANSPORTATION

- A. **F.O.B. POINT** - Since all prices are F.O.B. shipping point, all orders will be shipped on a freight collect basis via carriers offering the best combination known to Seller of availability, service, and rates. Any freight rates quoted are from reliable sources, but cannot be guarantees as to correctness or nonescalation.
- B. **DAMAGE OR LOSS IN TRANSIT** - Upon the Seller's delivery of the product described herein to a carrier shipment to Buyer, the risk of loss shifts to Buyer, and any damage or loss in transit is the responsibility of the Buyer. Seller assumes no liability for failure or delay in delivery due to carrier breakdowns or any cause beyond its control.
- C. **NOTICE OF CLAIM** - Any claim on account of short count or for any other cause shall be deemed as waived by Buyer unless made within thirty (30) days from date of delivery of products to which claim relates.

5. PREPAID AND ADD FREIGHT CHARGES

A surcharge will be added to all freight charges that are prepaid by RESCO and added to an invoice.

6. OWNERSHIP OF SPECIAL ITEMS

Payment of the Seller's charges for tool, dies, jigs, fixtures, and/or equipment necessary for the production of this order will not convey ownership to Buyer and such items shall remain the property of Seller.

7. GOVERNING LAW

Buyer and Seller agree that their rights and liabilities pursuant to this agreement shall be determined in accordance with the laws of the Commonwealth of Pennsylvania and adjudicated in the courts located in that commonwealth, notwithstanding the application of any provisions regarding conflicts of law.

8. TECHNICAL ADVICE

Any technical advice provided by Seller is furnished solely as an accommodation to Buyer; and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's sole risk.

9. RETURN OF SHIPMENT AND/OR "LEFTOVERS"

No returns whatsoever may be made by Buyer until Seller's representative has inspected products to be returned and has authorized in writing the terms and conditions for the specific return. The return shipment will be made on freight prepaid basis at the Buyer's expense. There will be no provision for return of non-stock items. Stock items returned must be received in a resalable condition within 60 days after original shipment. A minimum of 30% restocking charge will be made on all items accepted for restocking.

10. WARRANTY

Seller warrants that the products sold pursuant to this acknowledgment shall conform to the description thereof that appears on the face hereof. SELLER MAKES NO EXPRESS WARRANTIES EXCEPT AS SET OUT HEREIN AND MAKES NO IMPLIED WARRANTY THAT ITS PRODUCTS ARE FIT FOR ANY PARTICULAR PURPOSE NOR ANY IMPLIED WARRANTY OF MERCHANTABILITY WITH RESPECT TO SUCH PRODUCTS. Seller expressly disclaims all oral warranties and all other warranties. Seller specifically, but not by way of limitation, does not warrant the accuracy or sufficiency of any advice or recommendations given to buyer in connection with the sale of goods.

In lieu of all other remedies for breach of any warranty, or for any other alleged failure of the Seller arising out of the sale, delivery, nondelivery or use of the products described herein, said products will be replaced or repaired F.O.B. point of origin or at the option of the Seller, the purchase price will be refunded, but the Seller shall not be required to make any remedy whatsoever available unless Seller is notified of any alleged nonconformity or other alleged failure within thirty (30) days after the date of delivery, or in the case of nondelivery, within thirty (30) days after the date fixed for delivery.

No claims of any kind, including but not limited to incidental, consequential, contingent, negligent, or punitive damages, will be honored for an amount which is greater than the purchase price of the products with respect to which damages are claimed and any right of the Buyer to consequential or incidental damages of any nature, howsoever arising, is specifically excluded. In no event regarding any claim arising from or relating to this agreement will Seller have any liability if Buyer fails to follow the written instructions—including but not limited to drying schedules and MSDS's—for the product.

11. CREDIT APPROVAL

Shipments and deliveries shall, at all times, be subject to the approval of the Seller's credit department. If the Buyer should fail to pay according to the terms appearing on this acknowledgment, or, if in the opinion of the Seller, the financial responsibility of the Buyer at any time hereafter should become impaired, the Seller reserves the right, without prejudice to any claims for damages Seller may be entitled to make, to defer shipments or deliveries hereunder or under any other contract with Buyer, except upon receipt of satisfactory security or cash before shipment.

12. CANCELLATION OF ORDER

If Buyer requests cancellation of order, and order is for items normally stocked, cancellation charges will be limited to actual in and out freight incurred and a minimum of 30% of sales prices for restocking charge if order has been readied for shipment and/or shipped.

If order is for special non-stock items, cancellation charges will consist of actual in and out freight charges incurred and the full sales price less value to Seller, if any. Orders canceled in process of manufacture will be valued at the lesser of full sales price or prorate of percent complete less salvage value to Seller, if any.

13. PARAGRAPH TITLES

The paragraph titles appearing in this acknowledgment are included only for convenience and are not to be construed as a part hereof or a modification of the scope of the particular paragraph to which they relate.

14. ALLOWABLE OVERAGES

- A. **BRICK**-In the case of refractory brick and shapes, Resco Products, Inc reserves the right to ship and invoice additional quantities in accordance with the following, with the pieces being the quantity ordered, and the percentage being the overage allowance:

1-100 pieces, 10%; 101-1,000 pieces, 7%; 1,001-5,000 pieces, 3%; over 5,000 pieces, 1%.

- B. **Specialties**-In the case of refractory specialties, Resco Products, Inc reserves the right to ship and invoice additional quantities in accordance with the following, with the weight being the quantity ordered, and the percentage being the overage allowance:

1-550 pounds, 100%; 551-10,000 pounds, 10%; over 10,000 pounds, 3%.

15. INSTALLATION METHOD

Under no circumstance will the Seller be held responsible for choice of installation method, choice of installer, competency of installer, or quality of installation. At times, Seller may provide an on-site observer before or during installation, but only to the extent that the observer is there to offer product information such as, but not limited to, water content or mixing time requirements.

Seller assumes no liability with regard to quality of installation of Seller's product.

16. REALE OR TRANSFER OF GOODS

If BUYER resells or otherwise transfers any goods sold under this Agreement, BUYER must provide the purchaser or transferee with these Terms and Conditions and the sale or transfer must be expressly made subject to these Terms and Conditions, including the Warranty and Default provisions.